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**CC:** Bruce Wolfe, Shin-Roei Lee

**FROM:** Andree Greenberg
Watershed Division
**SAN FRANCISCO BAY**
**REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** November 5, 2009

**SUBJECT:** REDWOOD CITY SALT WORKS

Thank you for meeting with us on November 3, 2009 to discuss the Redwood City Salt Works Project. As you requested, I am sending you links to the two Goals Project Reports from 1999 and 2000 in addition to other useful links. I am also including a portion of our Basin Plan that discusses the Wetland Goals Reports in the Wetland Protection and Management Section, and general information on requirements for Wetland Fill.

Six Website Links are provided below:

**1. The link to Region 2's general website where you can review all programs that the project will need to be familiar with** (e.g., Groundwater Protection, Site Clean Ups, Stormwater, Water Quality, Streams and Wetlands, Watershed Management, Permits, Construction, Wastewater, etc. ) is:
http://www.waterboards.ca.gov/sanfranciscobay/

**2. The link to Region 2's Fact Sheet for Wetland and Riparian Projects** which discusses wetland regulations, mitigation guidance, and other related information (we supplied you with a hard copy at the meeting; please note that some of the links are outdated since 2006 but the substance has not changed) is :
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stream_wetland/factsheetwetlandprojects2006.pdf

**3. The link to Region 2's draft Stream and Wetland Protection Policy** is:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/streamandwetlands.shtml

This is only a draft but it would be prudent for Redwood City to know how state and regional policies may change in the future.

The State Board's related draft Stream and Wetland Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.shtml

**4. The link to our general Stream and Wetland Protection** webpage is:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stream_and_wetland_protection.shtml

**5. The 2 Wetland Habitat Goals Reports** can be found at:

http://www.sfestuary.org/userfiles/ddocs/Habitat_Goals.pdf

The first report entitled *Baylands Ecosystem Habitat Goals* (1999) contains the overall goals and general principles of habitat preservation to conserve predominantly native species biodiversity in the San Francisco Bay Region. It calls for restoring some of the salt ponds to tidal marsh and managing others for migratory and resident shorebirds, waterfowl, and other bird and species groups. For the Redwood Salt Works specifically, the recommendation is made on page 126-27 (pages 157-158 in the on-line pdf version) to "Restore tidal marsh along Westpoint Slough and Redwood Creek but modify the salt crystallizers adjacent to Redwood Creek as salt pan habitat managed for shorebirds and waterfowl." On the last page of the report page A-83 -84 (pages 323-324 in the on-line pdf version), recommendation #98 is made for the crystallizer and adjacent salt ponds to be "managed as saline pond habitat."

The second report entitled *Baylands Ecosystem Species and Community Profiles* (2000) has information on plants and animals that use the salt ponds, tidal marshes, and adjacent habitats in the San Francisco Bay Region, including the threatened snowy plover seen, I believe, on the Redwood Salt Works project site, and some of the shorebirds and waterfowl that have used that site and adjacent ones, such as the Ravenswood Ponds. Since these two reports were published 10 years ago, many public and private agencies and individuals have used them as a plan to restore San Francisco Bay's tidal marshes and related habitats, while trying to ensure that birds are not displaced when salt ponds are converted since this Region is a site of hemispheric importance for birds.

**6. The San Francisco Bay's Basin Plan that discusses the Goals Reports and other Wetland Management issues is provided as a link and a portion is copied below **.** Please see Chapter 2 for a discussion of beneficial uses.

http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

The Basin Plan's Wetland Protection and Management Section is copied below with references to the Baylands Ecosystem Habitat Goals Reports highlighted in yellow.

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4.23 WETLAND PROTECTION AND MANAGEMENT (from Chapter 4, pages 69-72)

Wetlands and related habitats comprise some of the Region's most valuable natural resources. Wetlands provide critical habitats for hundreds of species of fish, birds, and other wildlife; offer open space; and provide many recreational opportunities. Wetlands also serve to enhance water quality, through such natural functions as flood control and erosion control, stream bank stabilization, and filtration and purification of surface water.

The Water Board will refer to the following for guidance when permitting or otherwise acting on wetland issues:
- Governor's Executive Order W-59-93 (signed August 23, 1993; also known as the California Wetlands Conservation Policy, or the "No Net Loss" policy);
- Senate Concurrent Resolution No. 28; and
- Water Code Section 13142.5 (applies to coastal marine wetlands).

The goals of the California Wetlands Conservation Policy include ensuring "no overall net loss," achieve a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values ...", and reducing "procedural complexity in the administration of state and federal wetlands conservation programs."

Senate Concurrent Resolution No. 28 states, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for the benefit of the people of the state."

Water Code Section 13142.5 states, "Highest priority shall be given to improving or eliminating discharges that adversely affect ... wetlands, estuaries, and other biologically sensitive sites." The Water Board may also refer to the Estuary Project's Comprehensive Conservation and Management Plan (June, 1994) for recommendations on how to effectively participate in a Region-wide, multiple-agency wetlands management program.

4.23.1 BAYLANDS ECOSYSTEM HABITAT GOALS

Consistent with the California Wetlands Conservation Policy, the Water Board participated in the preparation of two planning documents for wetland restoration around the Estuary: Baylands Ecosystem Habitat Goals (1999) and Baylands Ecosystem Species and Community Profiles (2000),
together known as the Habitat Goals reports. The Habitat Goals reports provide a starting point for coordinating and integrating wetland planning and regulatory activities around the Estuary. The Habitat Goals reports identify and specify the beneficial uses and/or functions of existing wetlands and suggest wetland habitat goals for the baylands,defined in the Habitat Goals reports

as shallow water habitats around the San Francisco Bay between maximum and minimum elevations of the tides. The baylands ecosystem includes the baylands, adjacent habitats, and their associated plants and animals. The boundaries of the ecosystem vary with the bayward and landward movements of fish and wildlife that depend upon the baylands for survival. The Habitat Goals reports were the non-regulatory component of a conceptual regional wetlands management plan from the mid-1990's.

4.23.2 DETERMINATION OF APPLICABLE BENEFICIAL USES FOR WETLANDS

Beneficial uses of water are defined in Chapter 2 Beneficial Uses and are applicable throughout the Region. Chapter 2 also identifies and specifies the beneficial uses of 34 significant marshes within the Region (Table 2-3). Chapter 2 indicates that the listing is not comprehensive and that beneficial uses may be determined site-specifically. In making those site-specific determinations, the Water Board will consider the Habitat Goals reports, which provide a technical assessment of wetlands in the Region and their existing and potential beneficial uses. In addition to the wetland areas identified in Chapter 2, the Habitat Goals reports identified additional wetlands in the Region as having important habitat functions. Because of the large number of small and noncontiguous wetlands within the Region, it is not practical to specify beneficial uses for every wetland area. Therefore, beneficial uses will frequently be specified as needed for a particular site. This section provides guidance on how beneficial uses will be determined for wetlands within the Region.

Information contained in the Habitat Goals reports, the National Wetlands Inventory (NWI) prepared by the U.S. Fish and Wildlife Service (USFWS), and in the scientific literature regarding the location and areal extent of different wetland types will be used as initial references for any necessary beneficial use designation. The NWI is the updated version of the USFWS's Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al. 1979), which is incorporated by reference into this plan, and was previously used by the Water Board to identify specific wetland systems and their locations. The updated NWI or other appropriate methods will continue to be used to locate and identify wetlands in the Region. A matrix of the potential beneficial uses that may be supported by each USFWS wetland system type is presented in Table 2-4.

It should be noted that, while the Habitat Goals reports and USFWS's NWI wetlands classification system are useful tools for helping to establish beneficial uses for a wetland site, it is
not suggested that these tools be used to formally delineate wetlands.

4.23.3 HYDROLOGY

Hydrology is a major factor affecting the beneficial uses of wetlands. To protect the beneficial uses and water quality of wetlands from impacts due to hydrologic modifications, the Water Board will carefully review proposed water diversions and transfers (including groundwater

pumping proposals) and require or recommend control measures and/or mitigation as necessary and applicable.

4.23.4 WETLAND FILL

The beneficial uses of wetlands are frequently affected by diking and filling. Pursuant to Section 404 of the Clean Water Act, discharge of fill material to waters of the United States must be performed in conformance with a permit obtained from the U.S. Army Corps of Engineers (Corps) prior to commencement of the fill activity. Under Section 401 of the Clean Water Act, the state must certify that any permit issued by the Corps pursuant to Section 404 will comply with water quality standards established by the state (e.g., Basin Plans or statewide plans), or can deny such certification, with or without prejudice. In California, the State and Regional Water Boardsare charged with implementing Section 401. California's Section 401 regulations are at Title 23, CCR, Division 3, Chap 28, Sections 3830-3869. Pursuant to these regulations, the Water Board and/or the Water Board's Executive Officer have the authority to issue or deny Section 401 water quality certification. The certification may be issued with or without conditions to protect water quality.

The Water Board has independent authority under the Water Code to regulate discharges of waste to wetlands (waters of the state) that would adversely affect the beneficial uses of those wetlands through waste discharge requirements or other orders. The Water Board may choose to exercise its independent authority under the Water Code in situations where there is a conflict between the state and the Corps, such as over a jurisdictional determination or in instances where the Corps may not have jurisdiction. In situations where there is a conflict between the state and the Corps, such as over a jurisdictional determination or in instances where the Corps may not have jurisdiction, the Water Board may choose to exercise its independent authority under the Water Code.

The regulation of "isolated" waters determined not to be waters of the U.S. is one such instance where the Corps does not have jurisdiction. The U. S. Supreme Court, in its 2001 decision in Solid Waste Agency of Northern Cook County v. U. S. Army Corps of Engineers (the "SWANCC decision") determined that certain isolated, non-navigable waters are not waters of the U.S., but are the province of the states to regulate. The Water Code provides the State and Regional Water Boards clear authority to regulate such isolated, non-navigable waters of the state, including wetlands. To address the impacts of the SWANCC decision on the waters of the state, the State Water Board issued Order No. 2004-0004-DWQ in 2004, General WDRs for dredged or fill discharges to waters deemed by the Corps to be outside of federal jurisdiction. It is the intent of these General WDRs to regulate a subset of the discharges that have been determined not to fall within federal jurisdiction, particularly those projects involving impacts to small acreage or linear feet and those involving a small volume of dredged material.
Order No. 2004-004-DWQ does not address all instances where the Water Board may need to exercise its independent authority under the Water Code. In such instances, dischargers and/or affected parties will be notified with 60 days of the Water Board's determination and be required

to file a report of waste discharge.

For proposed fill activities deemed to require mitigation, the Water Board will require the applicant to locate the mitigation project within the same section of the Region, wherever feasible. The Water Board will evaluate both the project and the proposed mitigation together to ensure that there will be no net loss of wetland acreage and no net loss of wetland functions. The Water Board may consider such sources as the Habitat Goals reports, the Estuary Project's Comprehensive Conservation and Management Plan, or other approved watershed management plans when determining appropriate "out-of-kind" mitigation.

The Water Board uses the U.S. EPA's Section 404(b)(1), "Guidelines for Specification of Disposal
Sites for Dredge or Fill Material," dated December 24, 1980, which is incorporated by reference into this plan, in determining the circumstances under which wetlands filling may be permitted. In general, it is preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and functions through restoration or creation should only be considered after disturbance has been minimized.
Complete mitigation projects should be assessed using established wetland compliance and ecological assessment methods, such as the Wetland Ecological Assessment (WEA) and the California Rapid Assessment Method (CRAM).

Please let me know if you have any questions or comments.